

No. 14-0462 PO

The Director served his first request for admissions on Watts on June 27, 2014. Watts did not respond, and the Director filed a motion for summary decision on August 14, 2014. On September 30, 2014, we denied the motion for summary decision. On October 3, 2014, the Director mailed his second request for admissions to Watts, but he never responded.

The Director filed another motion for summary decision on November 7, 2014. We notified Watts that he should file any response by November 24, 2014. To date, Watts has filed nothing with this Commission.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.<sup>1</sup> Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence.<sup>2</sup> Watts did not respond to the motion for summary decision and therefore did not raise any issue with the facts as the Director stated them in the motion.<sup>3</sup>

To establish facts in support of summary decision, the Director relies on his second request for admissions and Watts' failure to respond to them. Under the law, a respondent's failure to answer a request for admissions results in the admission of each matter contained therein.<sup>4</sup> The matters admitted under Rule 59.01 bind the party to whom the requests were addressed and eliminate the need for further proof of the matters admitted.<sup>5</sup> Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law."<sup>6</sup> That rule applies to all parties, including those acting *pro se*.<sup>7</sup>

Accordingly, the following findings of fact are undisputed.

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<sup>1</sup> 1 CSR 15-3.446(6)(A). All references to CSR are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> 1 CSR 15-3.446(6)(B).

<sup>3</sup> *Id.*

<sup>4</sup> Missouri Supreme Court Rule 59.01(a). Section 536.073, RSMo 2000, and our Regulation 1 CSR 15-3.420(1) apply Rule 59.01 to this case. All further statutory references are to RSMo 2013 Supp. unless otherwise noted.

<sup>5</sup> *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985), *quoted in Dynamic Computer Solutions, Inc. v. Midwest Marketing Ins. Agency*, 91 S.W.3d 708, 715 (Mo. App. W.D. 2002).

<sup>6</sup> *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986).

<sup>7</sup> *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983); *see Welty v. State Bd. of Chiropractic Examiners*, 759 S.W.2d 295, 299 (Mo. App. W.D. 1988) (applying the rule to a pro se party in a proceeding before this Commission).

## **Findings of Fact**

1. Watts holds a peace officer license issued by the Director that is current and active and was so at all times relevant to this action.
2. From June 28, 2010 to April 21, 2011, Watts served as a probationary police officer with the St. Louis Metropolitan Police Department.
3. On January 9, 2011, Watts approached three juveniles outside his apartment building. He believed that they were tampering with his vehicle.
4. Watts was off duty at the time.
5. Watts displayed a handgun to the juveniles in a threatening manner.
6. Watts then proceeded to chase the three boys through the apartment complex, firing the weapon at them three times during the foot chase.
7. Watts was not acting in self defense and did not identify himself as a police officer at the time of the chase.
8. Watts' conduct was intended to place the boys in fear of imminent physical injury.
9. Watts' conduct was not necessary to the fulfillment of his official duties.

## **Conclusions of Law**

We have jurisdiction to hear the Director's complaint.<sup>8</sup> The Director has the burden of proving by a preponderance of the evidence that Watts has committed an act for which the law allows discipline.<sup>9</sup>

The Director argues that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

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<sup>8</sup> Section 590.080.2.

<sup>9</sup> See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Section 556.016<sup>10</sup> defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a “**crime**”. Crimes are classified as felonies and misdemeanors.

By not responding to the request for admissions, Watts admitted to certain facts about his conduct and that those facts authorize discipline. But statutes and case law instruct that we must “separately and independently” determine whether such facts constitute cause for discipline.<sup>11</sup> Therefore, we independently assess whether the facts admitted allow discipline under the law cited. The Director has averred that Watts is subject to discipline for the commission of three criminal offenses.

First, the Director argues that Watts committed the criminal act of assault in the first degree in violation of § 565.050,<sup>12</sup> which provides:

1. A person commits the crime of assault in the first degree if he attempts to kill or knowingly causes or attempts to cause serious physical injury to another person.

2. Assault in the first degree is a class B felony[.]

We agree that the admitted facts satisfy the elements of a Class B felony of first-degree assault.

Second, the Director argues Watts committed the offense of armed criminal action in violation of § 571.015,<sup>13</sup> which states:

1. [A]ny person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the crime of armed criminal action[.]

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<sup>10</sup>RSMo 2000.

<sup>11</sup>*Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988).

<sup>12</sup>RSMo 2000.

<sup>13</sup>*Id.*

We agree that the admitted facts satisfy the elements of the offense of armed criminal action.

Third, the Director contends that Watts committed the criminal offense of unlawful use of a weapon in violation of § 571.030, which states:

1. A person commits the crime of unlawful use of weapons if he or she knowingly:

\* \* \*

(4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner; [or]

\* \* \*

(9) Discharges or shoots a firearm at or from a motor vehicle, as defined in section 301.010, discharges or shoots a firearm at any person, or at any other motor vehicle, or at any building or habitable structure, unless the person was lawfully acting in self-defense[.]

Inasmuch as Watts admitted that he pulled a gun and shot at three juveniles and that he was not acting in self defense, we agree that his conduct satisfies the elements of unlawful use of a weapon.

Watts is subject to discipline under § 590.080(2) for committing the criminal offenses of first-degree assault, armed criminal action, and unlawful use of a weapon.

### **Summary**

There is cause to discipline Watts' license under § 590.080.1(2). We cancel the hearing.

SO ORDERED on January 29, 2015.

*\s\ Sreenivasa Rao Dandamudi*

SREENIVASA RAO DANDAMUDI  
Commissioner